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Federal Communications Commission
Office of the Secretary

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
Washington, DC 20554

Re: *Request for Waiver of Section 27.14(o) to Permit Six Months Additional Time to Demonstrate Substantial Service on EBS Spectrum*

Dear Ms. Dortch:

The National EBS Association ("NEBSA")¹ and the Catholic Television Network ("CTN")² – the primary representative organizations for the Educational Broadband Service ("EBS") community – are writing pursuant to Sections 1.3 and 1.925 of the Commission's Rules³ to request that the Commission extend for six months (until November 1, 2011) the current May 1, 2011 deadline by which EBS licensees must demonstrate they are providing substantial service.⁴ For the reasons set forth below, there is good cause for this limited waiver, the grant of which will avoid the imposition of undue burden on EBS licensees and commercial operators who lease EBS spectrum from them pursuant to the Commission's secondary market rules.⁵

¹ NEBSA, established in 1978 and formerly known as the National ITFS Association, is a non-profit, professional organization representing EBS licensees. The goals of NEBSA are to gather and exchange information about EBS and promote the development of EBS, to act as a conduit for those seeking information or assistance about EBS, and to represent the interests of EBS licensees and applicants. NEBSA's members include state government agencies, state universities, public community and technical colleges, private universities and colleges, public and private elementary and secondary schools, public television and radio stations, hospitals and hospital associations, and private, non-profit educational entities.

² CTN is an association of over a dozen Archdioceses and Dioceses that operate many of the largest parochial school systems in the U.S., including in New York, Los Angeles, Chicago, and Detroit.

³ See 47 C.F.R. §§ 1.3, 1.925. The Commission has routinely extended substantial service and other construction requirements where good cause is shown or it is demonstrated that as a result of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest. See, e.g. Applications filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission's Rules and Extension of Time to Construct and Demonstrate Substantial Service, *Memorandum Opinion and Order*, 23 FCC Rcd 5894, 5904-05, 5907 (WTB 2008); Airwave Wireless, L.L.C. and GW Wireless, Inc., *Order*, 22 FCC Rcd 1451, 1454 n.32 (WTB 2007) [*Airwave Wireless Order*]; Request of Warren C. Havens for Waiver or Extension of The Five-Year Construction Requirement For 220 MHz Service Phase II Economic Area and Regional Licensees, *Memorandum Opinion and Order*, 19 FCC Rcd 12994, 13000 (WTB 2004).

⁴ See 47 C.F.R. § 27.14(o) ("BRS and EBS licensees must make a showing of 'substantial service' no later than May 1, 2011.").

⁵ For the reasons set forth below, we are requesting that the May 1, 2011 deadline be waived for all EBS licenses so as to avoid the need to prepare and prosecute individual extension requests and to spare the Commission staff the need to evaluate and rule on such individualized requests. Thus, we respectfully request pursuant to Section 1.3 of

With the nationwide transition to the new 2.5 GHz band plan that accommodates both data and video uses nearly complete and widespread deployment of broadband technology well underway, EBS plays an increasingly important role both in the provision of wireless broadband services and in the transformation of how educational services are delivered in the United States. The Commission's long-standing commitment to education, as evidenced by its EBS eligibility and educational use rules, has ensured that EBS spectrum is licensed only to qualified entities that will use the spectrum for *bona fide* educational purposes. This is important because spectrum that is licensed to educators empowers them to use wireless technology in ways that best meet their changing needs.

Through strategic partnerships forged with commercial operators/lessees, EBS licensees are increasingly able to take advantage of new communications networks and tools to enhance and improve students' educational experience while helping to reduce the spiraling cost of education.⁶ As the Commission has frequently predicted, the symbiotic relationship between EBS licensees and commercial operators/lessees can advance the interests of both educators and commercial operators.⁷ Earlier this month, a report on teachers' growing usage of broadband in the classroom offered new evidence to support the National Broadband Plan's finding that broadband has greater potential to transform education than any other technological innovation in our lifetime.⁸ EBS is a substantial component of that transformation.

In the five years since the EBS and Broadband Radio Service ("BRS") substantial service rule – Section 27.14(o) – was first adopted,⁹ remarkable progress has been made. The transition

the Commission's Rules that the Commission also waive the requirement of Section 1.925 that requests for waiver in the Wireless Radio Services be submitted on a Form 601, 603 or 605 by each EBS licensee and the requirement of Section 1.946(e) that requests for extension of construction requirements be filed on Form 601. *See* 47 C.F.R. § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown").

⁶ *See e.g.*, Comments of CTN and NEBSA, WT Docket No. 10-112, at 2-3 (filed Aug. 6, 2011); Comments of CTN, GN Docket No. 09-157, at 3-5 (filed Sept. 30, 2009); Reply Comments of NEBSA, GN Docket No. 09-157, at 3 (filed Nov. 4, 2009) ("the Commission's new rules and policies for EBS empower educators to reduce the cost of education and use scarce educational resources most effectively.") (citation omitted).

⁷ *See e.g.*, Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165, 14168 (2004) (acknowledging that revised BRS/EBS rules "will improve the ability of educators to serve America's students thereby facilitating educators' use of our national spectrum resource."); Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606, 5705 (2006) ["BRS/EBS Second R&O"].

⁸ Federal Communications Commission, blog.broadband.gov, Ellen Satterwhite, *Broadband, Education, and the Learning Registry* (posted Feb. 4, 2011), available at <http://blog.broadband.gov/?entryId=1241083> (last visited Feb. 8, 2011).

⁹ *See BRS/EBS Second R&O*, 21 FCC Rcd at 5718-36.

to the new 2.5 GHz band plan is nearly complete. Clearwire, the largest commercial operator in the 2.5 GHz band, has launched the country's first nationwide 4G mobile commercial service, which today is available in 71 markets covering a population of over 110 million. Sprint, Comcast and Time Warner are all utilizing the Clearwire network to provide their own 4G services. The broadband service in 2.5 GHz band comprises the most widely deployed non-legacy wireless network in the nation. Other regional and local broadband service providers, including Digital Bridge Communications, Xanadoo and Nextwave, also have used BRS/EBS spectrum to launch networks, including in areas that are often otherwise unserved or underserved.

A significant portion of the spectrum used in 2.5 GHz commercial networks is leased from EBS licensees. Thus, there are a host of new opportunities for educators to collaborate with their commercial partners and assimilate new and rapidly changing technologies into their educational plans. A growing variety of programs and services have emerged to meet the changing needs of educators. For example, President Obama is expected to visit EBS licensee Northern Michigan University tomorrow to view a demonstration of how the university's WiMAX network has enabled distance learning for students and broadband access for local businesses.¹⁰ In Los Angeles, public and private schools are using EBS spectrum to transmit multiple digital streams of educational programming for classroom education, staff development and training, and distance learning. Other EBS licensees are incorporating EBS spectrum into larger wide area commercial fixed wireless or mobile systems while retaining rights to use system capacity needed to serve students, faculty, and staff. The important point is that EBS licensees are able to make these decisions for themselves as their specific educational needs change over time. In addition to improving the quality of education and reducing costs, future deployments in the band will provide students and adult learners in non-urban and historically underserved areas with access to the same educational opportunities that are available in better served metropolitan areas. Moreover, because EBS licensees must be either local educational institutions or provide educational services in partnership with local institutions, their mission often extends into local communities beyond the classroom.

By May 1, 2011, in a large number of markets across the country, EBS licensees will be making robust use of their spectrum and will satisfy the educational use safe harbor specified in Section 27.14(o)(2) of the Commission's Rules. Commercial operators that lease spectrum in these markets will also be able to demonstrate that they provide at least 30% commercial coverage in accordance with Section 27.14(o)(1)(ii).¹¹ We anticipate that even if the extension

¹⁰ Mimi Hall, *Obama to promote Northern Michigan University's WiMAX system*, USA Today, Feb. 8, 2011, <http://content.usatoday.com/communities/theoval/post/2011/02/obama-to-promote-northern-michigan-universitys-wimax-system/1>.

¹¹ 47 C.F.R. § 27.14(o)(1)(ii). The Commission has made clear that where a commercial lessee has provided sufficient service to satisfy a substantial service safe harbor, its licensee/lessor has satisfied the substantial service requirement. See *id.* at § 27.14(o)(3) ("An EBS or BRS licensee may be deemed to provide substantial service through a leasing arrangement if the lessee is providing substantial service under paragraph (o)(1) of this section."). See also Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Report and Order*, 25 FCC Rcd 7743, 7749 (2010) ("the revised rule will more clearly state the

we are requesting is granted, many EBS licensees will nonetheless submit their substantial service demonstrations by May 1, 2011.¹² Indeed, NEBSA and CTN will encourage licensees to do so in markets where the necessary facilities and services are deployed.

However, a brief extension is requested because in some areas – particularly non-urban areas of the country – EBS facilities are not yet fully constructed and operational, or these facilities are so recently coming on line that educational use is still in the process of being established.¹³ Most EBS licensees have contracted with their commercial partners to construct the facilities necessary for the provision of educational broadband services. In some cases, commercial operators have deployed the EBS radio portion of a network, but connectivity to the Internet is delayed by unexpected delays or difficulties in obtaining equipment or timely securing T1 or other backhaul services from other providers. In other cases, there have been local permitting delays that have hampered cell siting efforts. And in other cases, cells have recently been or soon will be made operational, but there will not be enough time for licensees to fully implement their educational use plans. It necessarily takes time following the activation of new cell sites for broadband capabilities to be integrated into a licensee's educational endeavors. And educators are working earnestly to do so. This difficulty is compounded by that fact that the May 1 deadline falls toward the end of the school year, which is an inopportune time to start launching new educational programs. Establishing a six month bridge from the current substantial service deadline to November 1, 2011, should allow sufficient time for the deployment of necessary facilities and educational services to satisfy one or more of the EBS substantial service safe harbors.

Although many EBS licensees are positioned to submit their substantial service showings by May 1, 2011, grant of this waiver request will avoid the need for individual EBS licensees who will not yet be ready to devote scarce resources to the preparation, submission and prosecution of individualized FCC forms requesting additional time to comply with Section 27.14(o), as would otherwise be required pursuant to Section 1.925 or Section 1.946 of the Commission's Rules. In addition, it will spare the Commission's staff the burden of processing, reviewing and ruling upon such individualized submissions. Indeed, bifurcating the BRS and the EBS filing deadlines will likely assist the Commission in timely processing 2.5 GHz band substantial service showings. According to the Universal Licensing System ("ULS"), there are

Commission's intent to allow BRS or Educational Broadband Service (EBS) licensees to demonstrate substantial service if a lessee has met one of the specified safe harbors").

¹² Many EBS licensees are prepared to demonstrate substantial service now, but are awaiting the release of a public notice from the Wireless Telecommunications Bureau that is expected to provide guidance as to the specific procedures that are to be followed in making substantial service submissions.

¹³ The Commission has recognized that rural, underserved and non-urban areas present unique challenges to network operators, and has been particularly accommodating when brief extensions are requested to meet construction benchmarks in rural areas. *See e.g.*, Northstar Technology, LLC, *Order*, 17 FCC Rcd 10908, 10909-10 (WTB 2002); *Airwave Wireless Order*, 22 FCC Rcd at 1454-56. Smaller operators, in particular have been hard hit by lack of access to capital markets to fund network deployment, a circumstance that has plagued the nation's businesses as a whole throughout the recession.

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477 active incumbent BRS licenses for which renewal applications are due on May 1, 2011. In addition to the substantial service showings that also will accompany those applications, ULS indicates that 433 additional substantial service showings are also due on that date with respect to BRS BTA and other authorizations that are not expiring on May 1, 2011. Grant of this request will permit the staff of the Wireless Telecommunications Bureau to promptly process the approximately 900 BRS applications and showings (along with the EBS substantial service showings that we anticipate will be filed by May), avoiding the backlog that might otherwise occur were all BRS and EBS filings submitted by May 1, 2011, and allowing it to then timely process EBS substantial showings filed prior to November 1, 2011.¹⁴

Given the circumstances described above, we respectfully submit that strict application of the May 1, 2011 Section 27.14(o) substantial service deadline would be inequitable, unduly burdensome and contrary to the public interest. Thus, good cause has been shown for grant of the requested waiver of Section 27.14(o) and the extension of the EBS substantial service deadline until November 1, 2011.

Respectfully submitted,

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¹⁴ It also should be noted that at present, the Commission does not have in place a mechanism for relicensing any EBS spectrum that might be reclaimed for failure to demonstrate substantial service. Although the Commission sought comment in the *Second Further Notice of Proposed Rulemaking* in WT Docket No. 03-66 on the adoption of rules to govern the issuance of new EBS licenses, that proceeding remains pending. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking*, 23 FCC Rcd 5992 (2008). Thus, as a practical matter, the requested extension will not delay the Commission in relicensing EBS spectrum for which substantial service is not shown.

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